



2008

## FAIR LABOR ASSOCIATION INDEPENDENT EXTERNAL MONITORING REPORT

**COMPANY:** New Wave Group  
**COUNTRY:** Vietnam  
**FACTORY CODE:** 770084933G  
**MONITOR:** OneStep Viet Co., Ltd.  
**AUDIT DATE:** September 23, 2008  
**PRODUCTS:** Knitwear  
**PROCESSES:** Knitting, Laundry,  
Embroidery, Stitching, Packing  
**NUMBER OF WORKERS:** 538

**FLA Comment:** *This report was submitted to the FLA and the FLA -affiliated company by the accredited independent external monitor. Despite deadline reminders and extensions for submission of a corrective action plan, the FLA has not received a plan to address the noncompliances raised in the report. Therefore, the report is posted in its current state and will be updated once a corrective action plan has been submitted to and reviewed by the FLA.*



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### **Wages, Benefits and Overtime Compensation: Holidays, Leave, Legal Benefits and Bonuses**

WBOT.5 Employers shall provide all legally mandated holidays, leave, benefits and bonuses, such as official holidays, annual leave, sick leave, severance payments and 13th month payments, to all eligible workers within legally defined time periods. In addition, all leave and bonuses shall be calculated correctly. (S)

#### **Noncompliance**

**Explanation:** 1. Unused annual leave of workers for 2007 paid at 100% of wages. Factory did not make any plans for workers to take their annual leave within the year, leading to workers working on day off with pay.

Legal Reference: Vietnam Labor Law, Article 61

2. Severance allowance of workers counted only as basic salary, but not included with allowance. The allowance ranged from 50,000 – 2,000,000 VND per worker.

Legal Reference: Vietnam Labor Law, Article 42

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### **Wages, Benefits and Overtime Compensation: Accurate Length of Service Calculation**

WBOT.18 All workers shall be credited with all time worked for an employer for purposes of calculating length of service to determine the benefits to which workers are entitled. (S)

#### **Noncompliance**

**Explanation:** [Factory covers social and health insurances for workers from 3rd month of employment; the first 3 months is probation period.](#)

[Legal Reference: Government Decree 44/2003/ND-CP, Article 7](#)

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## **Wages, Benefits and Overtime Compensation: General Compliance Wages, Benefits and Overtime Compensation**

WBOT.1 Employers shall comply with all local laws, regulations and procedures concerning the payment of wages and benefits, including overtime compensation. In any case where laws and the FLA Code are contradictory, the standard that provides the greatest protection for workers shall apply. Where provisions are lacking, employers shall take measures to reasonably accommodate matters concerning the payments of wages and benefits, including overtime compensation. (S)

### **Noncompliance**

**Explanation:** [Factory does not have salary scale preregistered with local labor department; current scale shows the lowest wage level is 800,000 VND and the highest is 1,160,000 VND per month \(from year 1 to year 9 of service\).](#)

[Legal Reference: Government Decree 114/2002/ND-CP dated on December 2002, Article 5, Point 3](#)

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### **Wages, Benefits and Overtime Compensation: Minimum Wage**

WBOT.2 Employers shall pay workers at least the legal minimum wage or the prevailing industry wage, whichever is higher. (S)

#### **Noncompliance**

**Explanation:** According to payroll testing done between March and August 2008, it was noted factory did not guarantee minimum wage to at least 10 workers in Knit 2. They received below minimum wage (from 451,000 – 710,000 VND) during April 2008; several workers received from 465,000 – 615,000 VND in May and June 2008, which is lower than legal minimum wage VND 800,000 VND per month. This issue is due to insufficient downtime payment.

Legal Reference: Government Decree 168/2007/ND-CP

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## **Wages, Benefits and Overtime Compensation: Accurate Calculation and Recording of Wage Compensation**

WBOT.17 All payments to workers, including hourly wages, piecework, benefits, bonuses, and other incentives shall be calculated and recorded accurately. (S)

### **Noncompliance**

**Explanation:** According to payroll testing from March to August 2008, it was noted that downtime of workers (waiting for production) were paid only 30% of basic wages. 5 selected workers in packing areas had 5 – 7 days in May 2008; 4 workers in Knit 2 had 8 – 15 days in April 2008. This downtime was not caused by workers; factory must pay in full.

Legal Reference: Vietnam Labor Law, Article 62

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### **Forced Labor: General Compliance Forced Labor**

F.1 Employers shall comply with all local laws, regulations and procedures concerning the prohibition of forced labor. (S)

#### **Noncompliance**

**Explanation:** [Factory does not have written policy on forced labor.](#)

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### **Forced Labor: Worker Ability to Terminate/Freedom of Movement**

F.13 Employers shall not utilize practices that restrict a workers' ability to terminate his or her employment or freedom of movement. Examples of such practices include, but are not limited to: (the threat of) physical or mental coercion; requiring deposits; imposing financial penalties; requiring recruitment fees; setting production targets or piece rates at such a level that workers need to work beyond normal working hours (excluding overtime) as set under the FLA Code in order to make the legal minimum wage or the prevailing industry wage; and denying and hampering access to, and renewal of, identity papers and/or work permits or any other personal legal (identification) documents. (S)

#### **Noncompliance**

**Explanation:** Workers not allowed go to the toilet 30 minutes before and after lunch time. However, there was no discipline noted for this restriction.

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### **Forced Labor: Forced Overtime**

F.14 The imposition of mandatory overtime beyond the limits set by the law, a freely negotiated collective bargaining agreement, and/or the FLA Code, in an environment where a worker is unable to leave the work premises, constitutes forced labor. (S)

#### **Noncompliance**

**Explanation:** There is no evidence to prove overtime work is voluntary. Workers who do not want to work overtime have to present a reasonable reason for line leader so they can go home.

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## **Freedom of Association: General Compliance Freedom of Association**

FOA.1 Employers shall comply with all local laws, regulations and procedures concerning freedom of association and collective bargaining. (S)

### **Noncompliance**

**Explanation:** From our discussions with the management and trade union leader, it was found that factory does not have written policy on freedom of association.

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### Freedom of Association: Right to Freely Associate

FOA.2 Workers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization. The right to freedom of association begins at the time that a worker seeks employment, and continues through the course of employment, including eventual termination of employment, and is applicable as well to unemployed and retired workers. (S)

#### Noncompliance

**Explanation:** **FLA Comment:** Vietnam has not ratified ILO Conventions 87 or 98. Under Vietnamese law, all unions are required to affiliate with the single trade union, the Vietnam General Confederation of Labor (VGCL), which is affiliated with the Communist Party. With respect to such union monopolies, the ILO Committee on Freedom of Association has stated that the rights of workers to establish organizations of their own choosing implies . . . the effective possibility of forming . . . [trade unions] independent both of those which exist already and of any political party. Vietnam's legal framework is therefore not compatible with the ILO Principles on Freedom of Association and, as such, all factories in Vietnam fail to comply with the FLA Code standard on Freedom of Association.

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### **Freedom of Association: Grievance Procedure**

FOA.26 Employer shall have in place written grievance procedures that allow first an attempt to settle grievances directly between the worker and the immediate supervisor but that, where this is inappropriate or has failed, it is possible for the worker to have the grievance considered at one or more steps, depending on the nature of the grievance and the structure and size of the enterprise. Employers shall ensure that the grievance procedures and applicable rules are known to workers. (P)

### **Noncompliance**

**Explanation:** [Factory does not have a written grievance procedure available.](#)

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## Harassment or Abuse: General Compliance Harassment or Abuse

H&A.1 Employers shall comply with all local laws, regulations and procedures concerning discipline, violence, harassment and abuse. (S)

### Noncompliance

**Explanation:** [Factory does not have written policy on non-harassment and abuse.](#)

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### **Child Labor: General Compliance Child Labor**

CL.1 Employers shall comply with all local laws, regulations and procedures concerning the prohibition of child labor. (S)

#### **Noncompliance**

**Explanation:** [Factory does not have written policy child labor and written hiring procedure.](#)

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## **Non-Discrimination: General Compliance Non-Discrimination**

D.1 Employers shall comply with all local laws, regulations and procedures concerning non-discrimination. (S)

### **Noncompliance**

**Explanation:** From management discussion, it was noted that factory does not have a policy on non-discrimination.

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**Non-Discrimination: Other - Non-Discrimination**

Other

**Noncompliance**

**Explanation:** Hazardous wastes kept on ground outside factory without roof cover; the solid wastes were not properly discharged by qualified/certified organization.

Legal Reference: Law on Environment, Article 71.

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**Code Awareness:**

GEN.2 Ensure that all Company factories as well as contractors and suppliers inform their employees about the workplace standards orally and through the posting of standards in a prominent place (in the local languages spoken by employees and managers) and undertake other efforts to educate employees about the standards on a regular basis.

**Noncompliance**

**Explanation:** Company has never communicated code of conduct with factory management and workers. When interviewed, workers did not understand the code elements.

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## Miscellaneous: Possible Homework

MISC.2 Possible Homework

### Noncompliance

**Explanation:** Factory allows workers to take production to work at home. Factory paid workers at 100% piece wage for all homework.

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## **Health and Safety: General Compliance Health and Safety**

H&S.1 Employers shall comply with all local laws, regulations and procedures concerning health and safety. (S)

### **Noncompliance**

**Explanation:** There is no annual labor environmental inspection conducted in this factory.

Note: Factory conducted 1 inspection in September 2008 for almost 15 years of operation; the inspection report was not ready for review, as it was not completed.

Legal Reference: Circular 13/BYT-TT dated on October 24, 1996, Section II, Point 2.1.3

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### **Health and Safety: Written Health and Safety Policy**

H&S.3 Employers are required to develop, maintain and regularly review a written health and safety policy. The policy must, at the very least, be aimed at complying with legal minimum safety and health standards, regulations and procedures. (P)

#### **Noncompliance**

**Explanation:** [Factory does not have a written policy on health and safety.](#)

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### **Health and Safety: Health and Safety Management System**

H&S.5 The health and safety policy shall contain the framework for a comprehensive health and safety management system within which employers' responsibilities and workers' rights and duties, various responsibilities of designated personnel, procedures that enable workers to raise health and safety concerns and procedures for reporting death, injury, illness and other health and safety issues (for instance, near-miss accidents) are clear and regularly tested and reviewed. (P)

#### **Noncompliance**

**Explanation:** Factory has a Health and Safety Committee; however, it is not functioning. No regular meetings and no internal inspection on health and safety conducted.

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### Health and Safety: Evacuation Requirements and Procedure

H&S.9 All applicable legally required or recommended elements of safe evacuation (such as posting of evacuation plans, the installation and maintenance of an employee alarm and emergency lighting systems, ensuring aisles/exits are not blocked and that workers are not blocked within their workstations, employee education, evacuation procedures, etc.) shall be complied with. Workers shall be trained in evacuation procedures. Alarm systems shall be regularly tested and evacuation drills shall be undertaken at least annually. (S)

#### Noncompliance

**Explanation:** Factory uses same fire alarm and bell for lunch. There is no battery backup for the alarm system. From the factory walk through, noted that 2 out of 4 exits in stitching section (ground floor) have been blocked by material.

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### Health and Safety: Safety Equipment and First Aid Training

H&S.10 All safety and medical equipment (such as fire fighting equipment, first aid kits, etc.) shall be available in sufficient numbers throughout the factory, maintained and stocked as prescribed and easily accessible to workers. A sufficient number of workers shall be trained in first aid and fire fighting techniques. (S)

#### Noncompliance

**Explanation:** No emergency lighting system installed in warehouse. All exit signs posted in English, but not in local language. Missing emergency light and signs in linking section on 2nd floor and training section on 3rd floor. From management discussion and detailed testing, found that there was no regular inspection conducted on fire extinguishers and fire fighting equipments. Emergency lights were not functioning.

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### **Health and Safety: Personal Protective Equipment**

H&S.11 Workers shall be provided with effective and all necessary personal protective equipment (such as gloves, eye protection, hearing protection, respiratory protection, etc.) to prevent unsafe exposure (such as inhalation or contact with solvent vapors, noise, dust, etc.) to health and safety hazards, including medical waste. (S)

#### **Noncompliance**

**Explanation:** No earplugs provided for employees working in embroidery and ball-making areas. No personal protective equipment provided for workers in laundry area (mask, gloves, protecting shoes).

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### **Health and Safety: Chemical Management and Training**

H&S.13 All chemicals and hazardous substances shall be properly labeled and stored in accordance with applicable laws. Labels shall be placed in the local language and the language(s) spoken by workers, if different from the local language. Workers shall receive training, appropriate to their job responsibilities, concerning the hazards, risks and the safe use of chemicals and other hazardous substances. (S)

#### **Noncompliance**

**Explanation:** [Factory does not provide chemical safety training for workers upon their employment.](#)

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### **Health and Safety: Material Safety Data Sheets/Worker Access and Awareness**

H&S.14 Material Safety Data Sheets (MSDS) for all chemicals used in the factory must be available at the usage and storage sites of the chemicals, in the local language and the language(s) spoken by workers, if different from the local language. Workers shall have free access to MSDS. (P)

#### **Noncompliance**

**Explanation:** Laundry chemical (softener) containers not labeled in Vietnamese. There is no MSDS provided for chemicals, and there is no secondary container provided.

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### **Health and Safety: Ventilation/Electrical/Facility Installation and Maintenance**

H&S.17 All necessary ventilation, plumbing, electrical, noise and lighting services shall be installed and maintained to conform to applicable laws and in such a manner as to prevent or minimize hazardous conditions to workers in the facility. (S)

#### **Noncompliance**

**Explanation:** Monitors found unsafe electric wiring in factory; bare wiring found under tables, on the floor and on the wall.

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### **Health and Safety: Machinery Maintenance and Worker Training**

H&S.18 All production machinery, equipment and tools shall be regularly maintained and properly guarded. Workers shall receive training in the proper use and safe operation of machinery, equipment and tools they use. Employers shall ensure safety instructions are either displayed/posted near all machinery or are readily accessible to the workers. (S)

#### **Noncompliance**

**Explanation:** [Factory does not provide health and safety training for workers upon their employment.](#)

[Legal Reference: Circular 37/2005/TT-LDTBXH dated December 29, 2005 regarding regulation on health and safety training, Point 2; employer is required to provide health and safety training for its workers upon employment and retrain annually.](#)

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### **Health and Safety: Proper Use of Machinery**

H&S.19 Employers shall only use positive incentives (risk awareness training, demonstration of proper use, awards, bonuses, etc.) to ensure workers use machinery, equipment and tools properly and safely. Workers shall not suffer any negative consequences for refusing to work with machinery, equipment or tools that are not properly guarded or reasonably considered unsafe. (P)

#### **Noncompliance**

**Explanation:** No machine guarding (belt, needle guards) installed for button machines and knit machines.

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### Health and Safety: Medical Facilities

H&S.21 Medical facilities shall be established and maintained in factories as required by applicable laws. Medical staff shall be fully licensed and recognized under applicable local rules and regulations. An appropriate number of medical staff shall be on duty during all working hours, including any type of overtime, as required under local law. An appropriate stock of medical supplies shall be maintained at all times. Medicines of which the expiration date has passed must be replaced immediately and disposed of in a safe manner. (P)

#### Noncompliance

**Explanation:** Factory does not have medical room in a factory of about 500 workers. All 4 first aid kits were empty and no first aid procedure posted at first aid kits.

Legal Reference: Circular 14/1998/TTLT of Ministry of Labor, Ministry of Health and Vietnam Labor Federation, Section 3, Point 3.1 (a and b).

No annual medical checkup for workers in past, from 1995. Factory plans to have first medical checkup for workers by end of October 2008).

Legal Reference: Circular 13/BYT-TT of Ministry of Health dated October 24, 1996, regarding medical checkup for workers. Point 3.2.2.

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### **Health and Safety: Sanitation in Factory Facilities**

H&S.22 All facilities including factory buildings, toilets, canteens, kitchens, and clinics, shall be kept clean and safe and be in compliance with all applicable laws, including relevant sanitation, medical and safety and health regulations. (S)

#### **Noncompliance**

**Explanation:** During the health and safety walkthrough, trash, unused items, and waste were found in many places.

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### Health and Safety: Food Preparation

H&S.25 All food made available to workers shall be prepared, stored, and served in a safe and sanitary manner in accordance with all applicable laws. All workers handling food shall be provided with the tools and equipment necessary to do so in a safe and sanitary manner. (S)

#### Noncompliance

**Explanation:** Cooked food in canteen not covered and canteen staff did not wear PPE while delivering food. Only 1 out of 4 cooking staff attended training course on food safety and hygiene. The canteen does not have certificates for food safety and hygiene.

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## Health and Safety: Other - Health and Safety

Other

### Noncompliance

**Explanation:** Regular waste and hazardous waste placed on ground out of factory, without roof cover.

Legal Reference: Decree 59/2007/ND-CP on solid waste management, Article 25.  
Collection, storage and transportation of hazardous solid waste

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### Hours of Work: General Compliance Hours of Work

HOW.1 Employers shall comply with all local laws, regulations and procedures concerning hours of work, public holidays and leave. (S)

#### Noncompliance

**Explanation:** Several workers exceeded legal daily overtime limit from 1 – 1.5 hours per day on several days in August 2008.

Legal Reference: Vietnam Labor Law, Article 69

Several workers worked from 61 – 76 hours per week in August 2008.

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**Hours of Work: Rest Day**

HOW.2 Workers shall be entitled to at least one day off in every seven-day period. If workers must work on a rest day, an alternative day off must be provided within that same seven-day period or immediately following the seven-day period. (P)

**Noncompliance**

**Explanation:** Several workers in stitching section worked 3 Sundays (rest day) in August 2008.

Legal Reference: Vietnam Labor Law, Article 72 regarding time of rest: In every week, each employee shall be entitled to a break of at least 1 day (24 consecutive hours)

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### Hours of Work: Time Recording System

HOW.6 Time worked by all workers, regardless of compensation system, shall be fully documented by time cards or other accurate and reliable recording systems such as electronic swipe cards. Employers are prohibited from maintaining multiple time-keeping systems and/or false records for any fraudulent reason, such as to falsely demonstrate working hours. Time records maintained shall be authentic and accurate. (P)

#### Noncompliance

**Explanation:** Factory uses manual timekeeping system to record workers' hours. Line leader marks an X for working day of workers, and maintains other manual sheets for overtime hours. Monitor was able to conclude time record, as all interviewed workers confirmed the same working hours as time record.

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